

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
Office of the Clerk  
Sam M. Gibbons United States Courthouse  
801 N. Florida Avenue  
Tampa, Florida 33602-3899

September 25, 2000

PUBLIC NOTICE

Acting on the advice and recommendations of its Local Rules Lawyers' Advisory Committee, the United States Bankruptcy Court for the Middle District of Florida has preliminarily approved amendments to the Court's Local Rules. The amendments are to be effective on *December 1, 2000*.

The full texts of the amendments follow this notice together with the Notes of the Advisory Committee that thoroughly explain the amendments and the reasons for them. The full texts and the Notes are also available on the Court's Website, <http://www.flmb.uscourts.gov/>.

The Court invites the comments and suggestions of members of the Bar and the public. The Court wishes to take any comments into consideration before taking final action on these amendments. The deadline to make comments is *November 20, 2000*. Full particulars as to how and when to make comments is included later in this notice.

*Brief Description of Amendments*

The amendments are of three types:

*1. The Disclosure/Discovery Package.*

Four amendments are linked together as a package, called the "Disclosure/Discovery Package," and are made necessary by the amendments to the Federal Rules of Civil Procedure that are to become effective on December 1, 2000, unless the Congress acts to the contrary.

In general, these amendments to the Court's Local Rules eliminate the provisions of the rules by which the Court had "opted out" of the mandatory disclosure and related provisions of the Federal Rules of Civil Procedure. Under these amendments,

therefore, the provisions of F.R.Civ.P. 26 will be fully applicable in adversary proceedings because, after December 1, the Court will no longer be able to "opt out" of them by local rule. Thus, the disclosures required by F.R.Civ.P. 26(a)(1) through (3) will generally be applicable in adversary proceedings; the parties must meet as required by F.R.Civ.P. 26(f); and, pursuant to F.R.Civ.P. 26(d), the parties may not seek discovery before the parties have conferred as required by F.R.Civ.P. 26(f). These requirements, however, will not apply in contested matters. Practice in contested matters will continue as before these changes because, under F.R.B.P. 9014, the Court retains this flexibility notwithstanding the December 1, 2000, amendments to the Civil Rules.

The amendments also reflect other policy choices and adjustments that harmonize these changes and make them seamless.

Because these amendments are necessitated by the December 1, 2000, amendments to the Federal Rules of Civil Procedure, the effectiveness of these amendments is conditioned upon the corresponding amendments to the Federal Rules of Civil Procedure becoming effective on December 1. Thus, in the unlikely event that the Congress acts to prevent the Civil Rules amendments from becoming effective, the amendments to the Court's Local Rules will similarly not go into effect.

The amendments in this "Disclosure/Discovery Package" are:

- Amendments to L.B.R. [7026-1](#);
- Addition of new L.B.R. [9014-2](#);
- Deletion of L.B.R. [7005-2](#); and
- Amendment to L.B.R. [9014-1](#).

2. *Service of objections to claims and motions to determine the secured status of claims.*

These amendments involve two things. First, the amendment to L.B.R. [3007-1](#) requires that objections to claims be served on the claimant's attorney if counsel has filed a notice of appearance and request for notice. This service is in addition to the service on the claimant that presently is required.

Second, new L.B.R. [3012-1](#) requires that motions to determine the secured status of claims under Section 506(a) of the Bankruptcy Code be served in the same manner as objection to claims. Thus, one would serve both the claimant and, if counsel has filed a notice of appearance and request for notice, the claimant's attorney.

3. *Copies of the Chapter 13 plan.*

The amendment to L.B.R. 5005-2 eliminates the current requirement that the debtor provide to the Clerk service copies of the Chapter 13 plan for all creditors. This requirement is eliminated because it is unnecessary in view of the practice in all divisions of the Court.

*Comments Are Invited*

Pursuant to F.R.B.P. 9029 and F.R.Civ.P. 83, the Court solicits comments and suggestions from members of the Bar and the public. The deadline to submit comments and suggestions is *November 20, 2000*. Comments and suggestions should be submitted in writing to:

Honorable C. Timothy Corcoran, III  
United States Bankruptcy Judge  
Sam M. Gibbons U. S. Courthouse  
801 N. Florida Avenue  
Tampa, Florida 33602-3899

The Court will consider comments and make any appropriate changes. Unless substantively changed, the amendments will be effective on December 1, 2000, without further notice.

LUTHER D. THOMAS  
Acting Clerk of Court

*Full Texts of Amendments and Advisory Committee Notes*

The full texts of the amendments and the Notes of the Advisory Committee follow (with stricken matter lined through and new matter highlighted):

## Rule 7026-1

### DISCOVERY -- GENERAL

~~(a) Initial and subsequent disclosure requirements described in F.R.Civ.P. 26(a)(1) (4), made applicable to contested matters and adversary proceedings by F.R.B.P. 9014 and 7026, are not mandatory, except as stipulated by the parties or otherwise ordered by the Court.~~

~~(b) The meeting of the parties and reporting to the Court requirements of F.R.Civ.P. 26(f), made applicable to contested matters and adversary proceedings by F.R.B.P. 9014 and 7026, are not mandatory, except as stipulated by the parties or otherwise ordered by the Court.~~

~~(c) Unless the Court orders the application of the meeting of the parties requirement of F.R.Civ.P. 26(f), the parties may initiate any method of discovery immediately after service is accomplished under F.R.B.P. 7004.~~

(a) Unless otherwise ordered by the Court, the conference of the parties required by F.R.B.P. 7026 and F.R.Civ.P. 26(f) shall occur as soon as practicable and in any event at least five days before a scheduling conference is held or a scheduling order is due under F.R.B.P. 7016 and F.R.Civ.P. 16(b).

(b) Unless otherwise ordered by the Court, the report outlining the discovery plan required by F.R.B.P. 7026 and F.R.Civ.P. 26(f) need not be in writing and filed. It is sufficient if the report is made orally at the scheduling conference.

(e)c) For the guidance of counsel in preparing or opposing contemplated motions for a protective order pursuant to F.R.B.P. 7026 related to the place of taking a party litigant's deposition, or the deposition of the managing agent of a party, it is the general policy of the Court that a nonresident plaintiff or moving party may reasonably be deposed at least once in this District during the discovery stages of the case; and that a nonresident defendant or respondent who intends to be present in person at trial or evidentiary hearing may reasonably be deposed at least once in this District either during the discovery stages of the case or within a week prior to trial or evidentiary hearing as the circumstances seem to suggest. A nonresident, within the meaning of this rule, is a person residing outside the State of Florida.

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*Notes of Advisory Committee*

**2000 Amendment**

This amendment is made necessary by the December 1, 2000, amendments to the Federal Rules of Civil Procedure.

Under F.R.B.P. 7026, F.R.Civ.P. 26 applies in adversary proceedings. Under F.R.B.P. 9014, F.R.B.P. 7026 also applies in contested matters. F.R.B.P. 9029(a)(1) further provides that the Court's local rules may not be inconsistent with the Federal Rules of Bankruptcy Procedure.

The December 1, 2000, amendments to F.R.Civ.P. 26 eliminate the provisions of that rule that permit courts to "opt out" of certain of its provisions that became effective on December 1, 1993. The Court is required, therefore, to rescind the provisions of its local rules by which it "opted out" of the mandatory disclosure and conference requirements contained in F.R.Civ.P. 26(a)(1)-(3) and (f). These "opt out" provisions are presently contained in paragraphs (a) and (b) of this local rule. Because of these required rescissions, the Court is also required to rescind the initiation of discovery provisions contained in paragraph (c) of this local rule.

As a consequence of this amendment, the provisions of F.R.Civ.P. 26 are fully applicable in adversary proceedings in the Court, although the terms of the rule set forth circumstances in which the parties may stipulate or the Court may order variations in individual cases. The Court may not do so, however, by local rule or standing order. Thus, the disclosures required by F.R.Civ.P. 26(a)(1) through (3) are generally applicable in adversary proceedings; the parties must meet as required by F.R.Civ.P. 26(f); and, pursuant to F.R.Civ.P. 26(d), the

parties may not seek discovery before the parties have conferred as required by F.R.Civ.P. 26(f).

Pursuant to F.R.B.P. 7005 and F.R.Civ.P. 5(d), the parties may not file with the Court the disclosures required by F.R.Civ.P. 26(a)(1) and (2) until they are used in the proceeding. The parties must file, however, the disclosures required by F.R.Civ.P. 26(a)(3).

Pursuant to F.R.B.P. 9014, F.R.B.P. 7026 applies in contested matters "unless the court otherwise directs." Thus, the Court retains the ability to direct by local rule that only portions of F.R.B.P. 7026 apply in contested matters. The Court has therefore contemporaneously promulgated new L.B.R. 9014-2 that applies F.R.B.P. 7026 to contested matters only to the extent permitted before this amendment to this local rule. Under L.B.R. 9014-2, therefore, the mandatory disclosure provisions of F.R.Civ.P. 26(a)(1)-(3) do not apply in contested matters, the parties are not required to confer as set forth in F.R.Civ.P. 26(f), and the parties may immediately seek discovery. Of course, the Court may direct the application of these Rule 26 provisions by specific order, and the parties may agree that they apply.

"If necessary to comply with [the Court's] expedited schedule for Rule 16(b) conferences," F.R.Civ.P. 26(f) does permit the Court to make local rules as to certain matters related to the Rule 26(f) conference and the discovery plan. Unlike the timing and pace of litigation in civil actions in the district court, litigation in adversary proceedings in the bankruptcy court is handled on an



expedited basis. In the new provisions of this local rule appearing as new paragraphs (a) and (b), therefore, the Court exercises this discretion in the manner the Committee believes is appropriate. The Court, of course, can vary these times by individual order.

The last paragraph of this local rule is relettered to reflect the rescission of old paragraphs (a) through (c) and the substitution of new paragraphs (a) and (b).

This amendment is effective on December 1, 2000.

## **Rule 9014-2**

### **GENERAL PROVISIONS REGARDING DISCOVERY -- CONTESTED MATTERS**

In applying the provisions of F.R.B.P. 7026 to contested matters, the court directs that:

(a) Initial and subsequent disclosure requirements described in F.R.Civ.P. 26(a)(1) through (3) are not mandatory, except as stipulated by the parties or otherwise ordered by the Court.

(b) The conference and reporting requirements of F.R.Civ.P. 26(f) are not mandatory, except as stipulated by the parties or otherwise ordered by the Court.

(c) Unless the Court orders the application of the conference requirement of F.R.Civ.P. 26(f), the parties may initiate any method of discovery immediately after service is accomplished under F.R.B.P. 7004.

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## ***Notes of Advisory Committee***

### ***2000 Amendment***

Pursuant to F.R.B.P. 9014, F.R.B.P. 7026 applies in contested matters "unless the court otherwise directs." This new local rule reflects the judgment of the Committee that the mandatory disclosure requirements of F.R.Civ.P. 26(a)(1) through (3) are burdensome, unwieldy, and of no benefit in routine contested matters. In an exercise of the Court's discretion under F.R.B.P. 9014, therefore, the Court directs in paragraph (a) that these provisions are not mandatory in contested matters. The Court retains the ability to order these disclosures in individual contested matters, and the parties retain the ability to agree to apply the disclosure provisions in individual contested matters.

The provisions of paragraphs (b) and (c) logically flow from the elimination of the mandatory disclosure requirements as provided in paragraph (a). Without the mandatory disclosure requirements, the conference and

reporting requirements of F.R.Civ.P. 26(f) are unnecessary. Similarly, there is no need for a discovery moratorium before that conference.

The new local rule contained here is made necessary by the December 1, 2000, amendments to the F.R.Civ.P. 26 and L.B.R. 7026-1. See the Notes of Advisory Committee as to the December 1, 2000, amendments to L.B.R. 7026-1. Although mandatory disclosures, Rule 26(f) conferences and reports, and discovery moratoriums now apply in adversary proceedings, they do not apply in contested matters as a consequence of this new local rule.

Pursuant to L.B.R. 9014-1, those portions of F.R.B.P. 7005 applying F.R.Civ.P. 5(a)-(d) apply in contested matters. As part of the December 1, 2000, amendments to the Federal Rules of Civil Procedure, F.R.Civ.P. 5 was amended as to the filing of disclosure and discovery materials. Under Rule 5(d), as amended, disclosures under Rule 26(a)(1) and (2) and discovery requests and responses under Rules 30, 31, 33, 34, and 36 must not be filed until they are used in the action. Disclosures under Rule

26(a)(3), however, are to be filed with the Court. Because F.R.Civ.P. 5(d) applies in contested matters by virtue of L.B.R. 9014-1 and applies in adversary proceedings by virtue of F.R.B.P. 7005, disclosure and discovery papers in contested matters are filed -- or not filed -- in the same circumstances as disclosure and discovery papers in adversary proceedings. L.B.R. 7005-2 formerly addressed this issue, but the Court abrogated that rule effective on December 1, 2000. See Notes of Advisory Committee as to the December 1, 2000, amendments to L.B.R. 7005-2.

This amendment is effective on December 1, 2000.

## Rule 7005-2

### FILING OF DISCOVERY MATERIAL

#### **[Abrogated]**

~~(a) No copy of the written interrogatories shall be filed with the Clerk by the party propounding them. The interrogatories as answered or objected to shall not be filed with the Clerk as a matter of course, but may later be filed by any party in whole or in part if necessary to the presentation and consideration of a motion to compel, a motion for summary judgment, a motion for injunctive relief, or other similar proceedings.~~

~~(b) Notices of the taking of oral depositions shall not be filed with the Clerk as a matter of course (except as necessary to presentation and consideration of motions to compel); and transcripts of oral depositions shall not be filed unless and until ordered by the Court.~~

~~(c) Requests for the production of documents and other things, and requests for admission, and answers and responses thereto, shall not be filed with the Clerk as a matter of course but may later be filed in whole or in part if necessary to the presentation and consideration of a motion to compel, a motion for summary judgment, a motion for injunctive relief, or other similar proceedings.~~

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#### ***Notes of Advisory Committee***

#### ***2000 Amendment***

The Court's local rules may not conflict with or duplicate the Federal Rules of Bankruptcy Procedure. See F.R.B.P. 9029(a)(1). This amendment deletes the provisions of this rule that prohibited the filing of discovery

materials until they are used in a proceeding or matter. The deletion is required because the December 1, 2000, amendments to F.R.Civ.P. 5(d) provide that disclosures under Rule 26(a)(1) and (2) and discovery requests and responses under Rules 30, 31, 33, 34, and 36 must not be filed until they are used in the action. Disclosures under Rule 26(a)(3), however, are to be filed with the Court.

Pursuant to F.R.B.P. 7005, F.R.Civ.P. 5 applies in adversary proceedings. Pursuant to L.B.R. 9014-1, F.R.Civ.P. 5(a)-(d) applies in contested matters. Thus, disclosures and discovery materials in adversary proceedings and contested matters are to be filed -- or not filed -- as provided in F.R.Civ.P. 5(d).

This amendment is effective on December 1, 2000.

## **Rule 9014-1**

### **SERVICE AND PROOF OF SERVICE -- CONTESTED MATTERS**

That portion of F.R.B.P. 7005 represented by F.R.Civ.P. ~~F.R.B.P. 7005(a)-(d)~~ applies in contested matters. Proof of service of pleadings and papers in contested matters (other than proof of initial service required to be made pursuant to F.R.B.P. 9014 or 7004) shall be made in accordance with the provisions of Local Rule 7005-1.

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### *Notes of Advisory Committee*

#### ***2000 Amendment***

This is a technical amendment. No change in substance is contemplated. The amendment is effective on December 1, 2000.



## **PART III.**

### **CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS**

#### **Rule 3007-1**

#### **CLAIMS -- OBJECTIONS**

(a) Objections to claims shall state the legal and factual basis for the objection and the amount of the debt conceded, if any.

(b) For purposes of F.R.B.P. 3007, service of an objection to a proof of claim shall be sufficient if it is served on the claimant by mailing a copy by prepaid, first class United States mail to:

(1) the attorney for the claimant, if the attorney has filed a notice of appearance and request for notice pursuant to F.R.B.P. 2002(g); and

(2)(i) the agent or representative of the claimant who executed the proof of claim, if the name and address of the agent or representative are legibly stated in the proof of claim; or

(2ii) if the name and address of the agent or representative are not legibly set forth in the proof of claim, the claimant at all addresses given for the claimant in the proof of claim. When the claimant is a domestic or foreign corporation, a partnership, or other unincorporated association, the objection shall be mailed to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the claimant.

(c) If the claimant is a governmental entity or an insured depository institution, the objection shall also be served in the manner required by F.R.B.P. 7004.

(d) All proposed orders on objections to claims shall recite in the ordering paragraph that the objection is either sustained or overruled and that the claim is either allowed or disallowed.

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### *Notes of Advisory Committee*

#### **2000 Amendment**

As set forth in new paragraph (b)(1) of this rule, objections to claim are to be served on the attorney for the claimant if the claimant's attorney has filed a F.R.B.P. 2000(g) notice of appearance and request for notice. Service on the claimant's attorney of record is in addition to service on the claimant as previously required by former paragraphs (b)(1) and (b)(2) of the rule. Under this amendment, these former paragraphs are renumbered as subparagraphs (b)(2)(i) and (b)(2)(ii).

The additional service requirement contained in this amendment is designed to remedy problems arising when an objecting party properly serves the objection on the claimant but does not also serve the claimant's counsel of record. Claimants who employ counsel in a bankruptcy case reasonably expect that their attorneys will receive notice of actions affecting their claims. See, e.g., F.R.Civ.P. 5(b). Yet attorneys who have properly entered their appearances are not regularly served when parties object to their clients' claims. This failure to notice counsel has led to the unnecessary continuation of hearings and the setting aside of orders sustaining objections when counsel for the claimant, who has received no notice, fails to respond or appear.

This amendment also harmonizes service of objections to claims with service upon a debtor under F.R.B.P. 7004(b)(9), which requires service on both the debtor and the debtor's counsel.

This amendment is effective on December 1, 2000.

## **Rule 3012-1**

### **VALUATION OF SECURITY -- SERVICE**

A party filing a motion to determine the secured status of a claim under 11 U.S.C. § 506 and F.R.B.P. 3012 shall serve the holder of the secured claim in both the manner required by L.B.R. 3007-1(b) and (c) and the manner required by F.R.B.P. 7004.

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### ***Notes of Advisory Committee***

#### ***2000 Amendment***

This new local rule is designed to ensure that a motion to determine the secured status of a claim is served on the person who filed the proof of claim and the claimant's attorney, just as an objection to a claim is served on the person who filed the proof of claim and the claimant's attorney. See L.B.R. 3007-1(b) and (c).

In the past, parties have served such motions on corporate claimants in an appropriate manner under F.R.B.P. 7004, but the person within the organization with knowledge

of the claim has not received the motion until well after the court has already acted on the motion. In these circumstances, the Court has had to revisit the matter, and the work of the parties and the Court has been duplicated. By ensuring that a party also serves the motion on the individual who filed the proof of claim, it is thought that problems of this sort experienced in the past can be eliminated.

This amendment is effective on December 1, 2000.

## **Rule 5005-2**

### **FILING PAPERS -- NUMBER OF COPIES**

(a) Petitions:

- (1) Chapter 7 - Original plus two\* copies.
- (2) Chapter 9 - Original plus five\* copies.
- (3) Chapter 11 - Original plus four\* copies.
- (4) Chapter 12 - Original plus three\* copies.
- (5) Chapter 13 - Original plus three\* copies.

(\*additional copy required in Tampa Division for counter logs)

(b) The statement of financial affairs, schedules, statement of intentions and list of equity security holders shall be filed with the same number of copies as the petition. A copy of these shall also be served on the U.S. Trustee.

~~(c) Chapter 12 or 13 Plan.~~

~~Sufficient copies of the plan must be provided to the Clerk's office for transmission to each creditor in addition to the original and three copies.~~

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### ***Notes of Advisory Committee***

#### ***2000 Amendment***

This amendment deletes the requirement, contained in paragraph (c), that debtors provide to the Clerk service copies for all creditors of their Chapter 13 plans. Under

practices that have developed in the Court, either the debtors or the Chapter 13 trustee serves the plans on creditors. The Clerk does not. The Clerk, therefore, has no need for service copies. This amendment simply harmonizes the rule with the practice.

This amendment is effective on December 1, 2000.